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June 13, 1994

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FILE # ML-27065-94

Honorable Dan Morales
Attorney General of Texas
Capitol Station
P.O. Box 12548
Austin, Texas 78711-2548

Opinion Committee

J.D.# 27065

RE: Request for Opinion by Winkler County as to Ad Valorem
Tax Exemption of Jail and Sheriff's Office.

Dear General Morales:

FACTS

Winkler County has entered into a Lease-Purchase Agreement, with Option to Purchase, with Municipal Capital Markets Corporation for a jail and sheriff's office complex, a copy is enclosed.

It is anticipated the County will accept and occupy the facility in 1994. Article VII, page 13, requires the County to pay all ad valorem taxes during the term of the lease-purchase agreement, and Article X, beginning on page 20, gives the County an option to purchase the property in the year 2000 prior to the end of the payment schedule.

The property lies within the taxing jurisdictions of Winkler County and the Kermit Independent School District.

REQUEST FOR OPINION

An opinion is requested as to the exempt tax status of the facility.

BRIEF

Article 11.11 of the Tax Code exempts property from taxation used for public purposes. Once Winkler County accepts the property it will be only used for public purposes. There are two significant cases involving similar tax exemptions, Tarrant County Water Supply Corp. v. Hurst-Euless-Bedford Independent School District, et al, 391 S.W.2d, 162, Fort Worth, 1965, writ denied, n.r.e., holding the property not exempt, and Texas Department of Corrections v. Anderson County Appraisal District, 834 S.W.2d, 130, Tyler, 1992, writ denied, holding the property exempt.

ACCOMPANIED BY ENCLOSURES -

FILED SEPARATELY

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Winkler County will be in sole possession and use the property during the term of the lease-purchase, may acquire legal title to the property in the year 2000 or later. The lease-purchase agreement requires Winkler County to pay all ad valorem and other taxes. The property will be only use for public purposes, to wit, a jail and sheriff's office for Winkler County. Winkler County has equitable ownership of the property, with a high probability of being the legal owner. The sheriff of each County is the keeper of the County jail and this will be the jail for Winkler County, Local Government, Article 351.041.

The Tarrant County Water Supply Corp. case is predicated on a condition precedent to vest title rather than a condition subsequent, and further alludes to the fact that any of the municipalities involved in that case may be dissolved prior to title vesting. It further states there is an uncertainty of the persons who take title, and the possibility of a contingent remainder, and does not address the use of the property for public purposes or the current trend of lease-purchase financing of jails to solve an immediate state wide jail shortage. No County may be dissolved without an act of the legislature.

There are other incidents of ownership, which are the obligations of Winkler County, such as property insurance, all repairs and payment of special governmental assessments. The only item lacking for legal ownership is a paper Deed to the property once the lease-purchase agreement has run its course, or if the County exercises its option to purchase prior to the expiration of the term, which option is in the year 2000.

The subject property is under an arrangement whereby Winkler County has equitable ownership of the property, is the only ever realistic user thereof, and will be the ultimate paper legal owner of the property.

This property may be within the holding of Texas Department of Corrections v. Anderson County Appraisal District, supra.

Your opinion is respectfully solicited.

Yours truly,



Thomas Cameron
Winkler County Attorney